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**JOB OFFERS AND ADVERTISEMENTS****MONTHLY CASE LAW OVERVIEW****Trade mark law**

*Judgement General Court about likelihood of confusion between LUBELSKA and LUBECA is upheld*

**[IPPT20190116, CJEU, Stock Polska v EUIPO](#)**

*Trade Mark Law.* General Court did not fail to appraise the figurative elements of the Lubelska mark for which registration was applied. existence of a likelihood of confusion between LUBELSKA and LUBECA to the requisite legal standard: General Court implicitly ruled that it considered the figurative elements of the mark applied for were not negligible and the word element was not dominant.

Appeal against the judgment of the General Court of 19 January 2017 dismissing the action brought against the refusal to register the Union trade mark applied for LUBELSKA on the basis of the earlier German word mark LUBECA. The appeal is dismissed. The Court rules that the General Court did not fail to appraise the figurative elements of the Lubelska mark for which registration was applied. On the contrary, it is clear from the face of paragraph 38 of the judgment under appeal that the General Court took account of the figurative elements in appraising the visual similarity of the signs at issue. The Court also finds that the General Court did not distort the facts. Furthermore, the Court finds that the General Court implicitly ruled that it considered the figurative elements of the mark applied for were not negligible and the word element

was not dominant. The General Court therefore sufficiently stated its reasons for the existence of a likelihood of confusion to the requisite legal standard.

*Judgement General Court about dissimilarity So...? and SO'BiO ętic upheld*

**[IPPT20190228, CJEU, Groupe Lea Nature v EUIPO](#)**

*Trade Mark Law.* Likelihood of confusion cannot be subject to a condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark: General Court therefore not obliged to find that the element 'so' was dominant in order to find that the signs at issue were similar.

Appeal against the judgment of the General Court of 23 September 2014 in which the General Court upheld the action brought against the successful opposition of Groupe Lea Nature based on the EU word mark "So...?" against the figurative sign "SO'BiO ętic". According to the General Court the signs were not similar. The Court of Justice dismisses the appeal.

**Litigation**

*Formula E not fast enough: proof of genuine use not submitted in time, time limit for bringing an action against this decision expired*

**[IPPT20190410, CJEU, The Green Effort v EUIPO](#)**

*Litigation.* The Green Effort acquired rights over the word mark Formula E, registered in 2011. (FIA) filed an application for revocation of the contested mark for all the goods and services on the ground that it had not been put to genuine use within a continuous period of five years.

On 21 March 2016, the Cancellation Division of EUIPO invited The Green Effort to submit, by 21 June 2016, proof of genuine use of the contested mark. Since that proof was submitted on 22 June 2016, in disregard of the time limit prescribed, it was not taken into account. On 27 July 2016, The Green Effort filed an application for restitution in integrum with the Cancellation Division of EUIPO in order to have its rights to submit that proof re-established. By decision of 8 September 2016, the Cancellation Division rejected the application and revoked the contested mark in its entirety. On 5 October 2016, the applicant filed a notice of appeal with EUIPO against the decision of the Cancellation Division. By the contested decision, the Second Board of Appeal of EUIPO dismissed the appeal.

By the order under appeal, the General Court found that the contested decision had been notified to The Green Effort on 19 September 2017, with the result that, in accordance with Article 58 of its Rules of Procedure, the time limit for bringing an action under Article 65(5) of Regulation No 207/2009 had expired on 29 November 2017. Given that the application was lodged at the General Court Registry on 4 December 2017, the

General Court held that the action was brought out of time.

The CJEU finds that The General Court did not err in law in deciding that the time limit for bringing an action against the contested decision had expired. According to the CJEU, the article 4(4) of the decision concerning electronic communication with and by the Office must be interpreted as meaning that notification will be deemed to have taken place on the fifth calendar day following the day on which EUIPO placed the document in the user's inbox, unless the actual date of notification can be accurately established as a different date within that period of time. Therefore, since it is common ground that the representative of The Green Effort requested access to the contested decision on 19 September 2017, that he downloaded it and became aware of it on that same day, the General Court did not err in law in deciding that the time limit for bringing an action against the contested decision expired on 29 November 2017.

## ITEMS

### News

#### ***IP 10190. Copyright reform clears final hurdle: Commission welcomes approval of modernised rules fit for digital age***

*From the press release:* "Today the Council of the European Union gave its green light to the new Copyright Directive which will bring concrete benefits to citizens, the creative sectors, the press, researchers, educators, and cultural heritage institutions.

The reform will adapt copyright rules to today's world, where music streaming services, video-on-demand platforms, news aggregators and user-uploaded-content platforms have become the main gateways to access creative works and press articles. It was proposed by the Commission in September 2016 and voted by the European Parliament in March 2019. [...]

After publication in the Official Journal of the EU, the Member States will have 24 months to transpose the Directive into their national legislation. The new rules on Copyright as well as the new rules facilitating access to online TV and radio content across borders will be formally signed on Wednesday 17 April at the European Parliament in Strasbourg."

#### ***IP 10191. 55 million pirated views on Game of Thrones' season 8 premiere after only 24 hours***

*Theverge.com reports:* "Game of Thrones returned to HBO with some of its highest ratings yet last Sunday, but even those numbers were dwarfed by an even bigger audience. The season 8 premiere had almost 55 million pirated views across illegal streams, downloads, and torrents in the first 24 hours, according to analytics firm MUSO. [...] For comparison, HBO saw a total of 17.4 million viewers across its three platforms (the premium cable channel and its two internet streaming

services, HBO Go and HBO Now), split between 11.8 million for the traditional TV channel and 5.6 million on the company's official internet streams. Those numbers will likely go up in the coming days as more viewers watch the episode, but, presumably, so will the pirated views."

#### ***IP 10189. ASML falls victim to corporate theft, plays down impact***

Reuters: "Dutch semiconductor equipment maker ASML said on Thursday that a U.S. software subsidiary was the victim of corporate theft several years ago, but denied that the information stolen was a blueprint for its lithography machines.

The comments came in response to a report in the Dutch business daily newspaper Financieele Dagblad, which said technology had been stolen by high-level Chinese employees at ASML's research and development department and ultimately leaked to a company linked to the Chinese government.

ASML said "we discovered this theft ourselves" and took immediate action. It said the technology stolen was not core to its business, and added it was still able to operate in China. [...]"

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